

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.567 OF 1998**

1. Ankush Namdeo Kumbhar
2. Lalasaheb Namdeo Kumbhar... Appellants
(Orig. Defendant Nos.1&2)
Versus

1. Shivaji Nivrutti Kumbhar.. Respondent No.1-
Original Plaintiff
2. Maruti Nivrutti Kumbhar .. Respondent No.2-
Original Defendant No.3
3. Dnyandev Nivrutti Kumbhar.. Respondent No.3-
Original Defendant No.4

Shri P.B. Shah for the Appellant
Shri Talkute for the Respondents

**CORAM : S.R. SATHE, J.
DATED : 18/07/2007**

ORAL JUDGEMENT :-

1. The appellant-original defendant Nos. 1 and 2 in Regular Civil Suit No. 182 of 1993 have preferred this appeal against the judgement and order passed by the Court of 4th Additional District Judge, Satara whereby the order passed by the Joint CJJD, Phaltan dismissing the Plaintiff's suit for possession was set aside and defendant Nos.1 and 2 were directed to hand over the possession of the suit property to the Plaintiff. For the sake convenience hereafter the parties shall be referred to as 'Plaintiff' and 'defendants'.

2. The brief facts giving rise to this appeal are

as under :-

Plaintiff and defendant Nos.3 and 4 are real brothers. The suit land bearing Block No.721 admeasuring 41R situated at village Aasoo, Taluka Phaltan was initially owned by Nivrutti Gangaram Kumbhar, father of Plaintiff and defendant Nos.3 and 4. It was his self acquired property. He gave the suit property to his sister Dwarkabai Sitaram Kumbhar for her maintenance or for her livelihood during her life time and directed that after her death the said land should come to him. Accordingly, he submitted an application to Revenue Authorities on 22/06/1958 and on the basis of the said application name of Dwarkabai Sitaram Kumbhar was entered to the suit land by virtue of mutation entry dated 04/10/58.

3. Plaintiff's father Nivrutti died on 1979 leaving behind Plaintiff and defendant Nos. 3 and 4 as the only legal heirs. According to Plaintiff, though Dwarkabai had no right to sale the suit land, on 29/08/1983 she sold the suit land to defendant Nos. 1 and 2 under the Sale Deed dated 29/08/1983 by accepting Rs.5000/- from them. Dwarkabai died on 13/12/1990. According to Plaintiff, Sale Deed executed by Dwarkabai was illegal. Hence, Plaintiff filed the present suit on

14/08/1992 for possession of the suit land.

4. The defendant Nos. 1 and 2 who are real brothers filed their Written Statement at Exh-26 and opposed the suit claim. They denied all the allegations of the Plaintiff and contended that the suit land was purchased by Dwarkabai and she was the full owner of the same. She sold the suit property to defendant No.1 under the registered sale deed and on that basis mutation entry No.491 was also made but the Plaintiff and defendant Nos. 3 and 4 did not challenge the order on the basis of which the said mutation entry was made. After the Sale Deed of 29/08/1983, by way of family arrangement the defendant No.1 gave the suit land to defendant No.2.

5. The defendant Nos. 1 and 2 also contended that suit land was initially owned by Baban Nimbalkar and they sold the same to Dwarkabai and Nivrutti Gangaram Kumbhar in the year 1956. Though, the sale deed was in the name of Nivrutti he had taken money for 3 acres land from Dwarkabai and thereafter, he partitioned the said land on 22/06/1958 and hence, the mutation entry No.4256 is not correct. As Dwarkabai was in need of money, she sold the land bearing Survey No.177 2B/3A

admeasuring 80R to Namdeo Kumbhar for Rs.5000/- on 15/06/1976 and Plaintiff did not raise any dispute about the same. The defendants also contended that as Dwarkabai wanted to clear the society's dues, she sold the suit land to Ankush Namdeo Kumbhar and on that basis mutation entry was made but the Plaintiffs did not challenge the said mutation entry. Thus, according to defendant, the suit filed by Plaintiff was barred by law of limitation. Hence, on all these grounds defendant Nos. 2 and 3 prayed for dismissal of the suit.

6. On the above mentioned pleadings the learned Trial Judge framed issues at Exh-27. In order to prove the suit claim, the Plaintiff Shivaji Kumbhar examined himself at Exh-34. As against this, the defendant No.1 deposed for himself and for defendant No.2 at Exh-36 and examined one other witness Yashasvi Vikramsinha Nimbalkar Exh-45. The defendant No.3 examined himself at Exh-50. Both the parties produced certain documents.

7. After considering the evidence adduced by both the sides the learned Trial Judge came to the conclusion that Plaintiff has failed to prove that he is the owner of the suit land and that the said land

was given by his father to Dwarkabai for maintenance during her lifetime. The Trial Court also held that sale deed executed by Dwarkabai in favour of defendant No.1 on 29/08/1983 is legal and valid and binding on Plaintiff and defendant Nos. 3 and 4. He also held that the suit is barred by law of limitation. He, therefore, dismissed the Plaintiff's suit.

8. Being aggrieved by the above mentioned order Plaintiff filed Civil Appeal No.22/1995. After hearing the arguments of both the sides, learned 5th Additional District Judge, Satara came to the conclusion that the suit property was the self acquired property of Plaintiff's father and it was given to Dwarkabai for her livelihood during her lifetime and it had not created any ownership rights in her favour and she had no legal right to sell the said land to defendant No.1. He, therefore held that the said sale deed is illegal and void and Plaintiff is entitled to get the possession. Naturally, he allowed the appeal and passed the decree for possession against the defendant Nos. 1 and 2.

9. The above mentioned order is challenged by the original defendant Nos. 1 and 2 in this Second Appeal.

From the perusal of the record it appears that while admitting the appeal this Court (CORAM : D.K. TRIVEDI, J) has passed following order :-

"Heard.

Admit as per the ground (i) & (j)."

The said grounds are as under ; -

"(i) The Lower Appellate Court erred in not considering the provisions of Section 14(1) of the Hindu Succession Act.

(j) The Lower Appellate Court erred in holding that the provisions of Section 4 of the Benami transactions (Prohibitions) Act, 1988 applied to the holding of the said Dwarkabai when even it was not the case of the Plaintiff himself that the said provisions applied to the case. The Plaintiff's case is, that the said Dwarkabai had only limited interest in the suit property, and not that of applicability of the prohibition under the Benami Transactions (Prohibition) Act, 1988. In the light of this pleading it was not open to the Lower Appellate Court to substitute its view for the Plaintiff's case ;"

10. In this appeal before me, Shri P.B. Shah learned Advocate for the original Defendant Nos. 1 and 2 has urged only 3 points. Firstly, he submitted that the learned Trial Judge has not properly appreciated the evidence on record and has ignored the fact that earlier sale deed executed by Dwarkabai was in the year 1976 and the same was never challenged by Dwarkaba during her life time, nor it was challenged by the present Plaintiff. Secondly, he canvassed before me that even if it is assumed for the sake of argument that the suit land was given by Plaintiff's father Nivrutti to his sister Dwarkabai for maintenance during her lifetime in 1958 still then by virtue of the provisions of section 14(1) of the Hindu Succession Act, it has to be held that Dwarkabai had become full owner of the suit land and as such, she had every right to sale the said land. Lastly, he submitted that the defendant No.3 the brother of Plaintiff has in fact stated that Plaintiff and his two brothers are not concerned with the suit land. Though, the sale deed is executed in favour of defendant No.1 on 29/08/1983 Plaintiff did not challenge the same within 3 years and as such, the suit is barred by law of limitation. He, therefore, submitted that the appeal be allowed and

suit be dismissed. As against this, Shri Talkute, learned Advocate for the Plaintiff supported the judgement and order passed by the Additional District Judge and submitted that the provisions of section 14 (1) of the Hindu Succession Act are not applicable to the facts of the present case and Dwarkabai had in fact not acquired any right in respect of the suit property. He, therefore, submitted that the appeal be dismissed.

11. At the outset it must be mentioned that though, at the time of trial as well as at the time of first appeal an attempt was made on behalf of the defendant Nos. 1 and 2 to show that the suit property was in fact purchased by Dwarkabai but in the name of Plaintiff's father Nivrutti Gangaram Kumbhar, the said point is rightly not agitated before me. It is crystal clear that the defendant Nos. 1 and 2 had miserably failed to adduce any evidence to show that Dwarkabai was having any income or that she had given money to her brother Nivrutti for purchase of the suit property. So, there is no necessity to consider the said aspect.

12. The main thrust of the learned Advocate for the defendant Nos. 1 and 2 was on the point that though it is mentioned in the mutation entry dated 04/10/1958

that the suit land is given to Dwarkabai during her lifetime for maintenance and after her death the property should come to Nivrutti, by virtue of the same, Dwarkabai in fact become the owner of the said property as the land was given in her possession. In order to substantiate this proposition he has placed reliance on section 14(1) of the Hindu Succession Act. As against this, Shri Talkute, learned Advocate for the Respondent-Plaintiff submitted that the said section is not at all applicable.

13. In order to find out whether there is any substance in the argument advanced by the learned Advocate for the defendants it would be worthwhile to see what section-14 of the Hindu Succession Act, 1956 says. It runs as follows :-

14. Property of a female Hindu to be her absolute property:-

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation :- *in this sub-section, 'property' includes both movable*

*and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as **Stridhana** immediately before the commencement of this Act.*

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

14. In order to find out whether the above mentioned provision of section 14(1) is applicable to

the instant case it must be borne in mind that in the present case though, there is no specific evidence to show that Dwarkabai was married, admittedly, she was known as Dwarkabai Sitaram Kumbhar. If she would not have been married, her name would have appeared as Dwarkabai Gangaram Kumbhar. So, from the evidence on record it does appear that it is not the contention of the defendants that Dwarkabai was not married. Now, it is not disputed that the suit property was self acquired property of Nivrutti Gangaram Kumbhar, father of Plaintiff and defendant Nos. 3 and 4. There is absolutely no evidence on record to show that Nivrutti Gangaram Kumbhar had any ancestral property and the suit property was purchased out of the income of the said property. So, one thing is certain that though Nivrutti Gangaram Kumbhar had given the suit property to her married sister Dwarkabai for her maintenance during her lifetime, he had given the same not because he was under any legal obligation to provide maintenance to her sister. Nor it can be said that Dwarkabai had received the property as of right.

15. It was tried to be argued on behalf of defendant Nos. 1 and 2 that defendant No.3 the brother of Plaintiff has in fact supported their case. However,

if we carefully read the cross-examination of defendant No.3 then it is very clear that the defendant No.3 has in fact no personal knowledge about any transaction. He has clearly stated that he has no knowledge as to whether Nivrutti Gangaram Kumbhar had given the suit property to Dwarkabai for her maintenance. So, under such circumstances, evidence of defendant No.3 has in fact no value. Moreover, from the other evidence on record and the position of law, it is clear that the suit land was given to Dwarkabai only for her maintenance during her lifetime and then it was to be received back by Nivrutti.

16. So, bearing in mind the above mentioned peculiar facts and circumstances, we have to see the provision of section 14(1) and decide whether the same is applicable to the facts of the present case.

17. From the bear reading of section 14(1) of the Hindu Succession Act it is clear that the said Section is applicable only in respect of the property which is possessed or acquired by a woman as of right. Before any property can be said to be 'Possessed' by Hindu Woman as contemplated in section 14(1) of the Hindu Succession Act 2 things are necessary;

(1) that she must have had a right to the possession of that property and

(2) She must have been in possession of that property either actually or constructively.

It has been so held in a case Dindayal and another V/s. Rajaram 1970(1) SCC 786.

18. Shri Talkute, learned Advocate for the original Plaintiff has drawn my attention to a case Eramma V/s. Veerupana and others, AIR 1966 SUPREME COURT 1879 wherein the Apex court has observed :-

“ (B) Hindu Succession Act (30 of 1956), S.14- SUCCESSION – Section is not attracted where female Hindu is in possession of property, without any right to it. The property possessed by a female Hindu, as contemplated in the section, is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act. It may be noticed that the Explanation to S.14(1) sets out the various modes of acquisition of the property by a female Hindu and indicates that the section applies only to property to which the female Hindu has acquired some

kind of title, however restricted the nature of her interest may be. The words "as full owner thereof and not as a limited owner" as given in the last portion of sub-section (1) of S.14 clearly suggest that the legislature intended that the limited ownership of a Hindu female should be changed into full ownership. In other words S.14 (1) the Act contemplates that a Hindu female who, in the absence of this provision, would have been limited owner of the property, will now become full owner of the same by virtue of this section. The object of the section is to extinguish the estate called 'limited estate' or 'widow's estate' in Hindu Law and to make a Hindu woman, who under the old law would have been only a limited owner, a full owner of the property with all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder. The Explanation to sub-section (1) of S. 14 defines the word property as including "both movable and immovable property acquired by a female

Hindu by inheritance or devise" Sub-section (2) of S.14 also refers to acquisition of property. Though the Explanation has not given any exhaustive connotation of the word 'property the word acquired used in the Explanation and also in sub-section (2) of S.14 clearly indicates that the object of the section is to make a Hindu female a full owner of the property which she has already acquired or which she acquires after the enforcement of the Act. It does not in any way confer a title on the female Hindu where she did not in fact possess any vestige of title. It follows, therefore, that the section can not be interpreted so as to validate the illegal possession of a female Hindu and it does not confer any title on a mere trespasser. In other words, the provisions of S. 14 (1) of the Act can not be attracted in the case of a Hindu female who is in possession of the property of the last male holder on the date of the commencement of the Act when she is only a trespasser without any right to property."

19. Bearing in mind the above observations if we see the facts of the present case it is quite evident that in the instant case Dwarkabai had certainly not acquired any kind of title in respect of the suit property either before or after the commencement of the Act. In the mutation entry dated 04/10/1958, it is mentioned

“निवृत्ती गंगाराम कुंभार यांनी आपली बहीण व्दारकाबाई हीने आपल्या हयातोपर्यंत बाजूस दाखल केलेली जमीन खावी. तिचे हयातीनंतर सदर जमीन परत आपणाकडे रहावी असे मजकूराचा अर्ज तारीख 22-6-1957 रोजी देउन व्दारकाबाईस वाटप करून दिलेवरून नोंद केली.”

(As Nivrutti Gangaram Kumbhar submitted an application dated 22/06/1957 to the effect that his sister Dwarkabai should take income for her livelihood of the land shown herein and after her death the said land should come to him and partitioned the land for Dwarkabai, mutation entry is made)

20. Thus, though the word partition is used in the said mutation entry it only indicates that particular land or portion was given to Dwarkabai for her livelihood. It was certainly given to her for her

maintenance during her lifetime. If we take into consideration the provision of section 14(1) of the Hindu Succession Act, then it is very clear that by giving land to Dwarkabai accordingly, Dwarkabai had certainly not acquired any absolute right in respect of the said land and she had no power to dispose of the said land. On the contrary, the same was to be received by Nivrutti after the death of Dwarkabai. It seems that it is only out of love and affection, though, Nivrutti was not under any legal obligation, as a good gesture he gave some piece of land to Dwarkabai for her maintenance during her lifetime. Such land was certainly not provided to her, as a result of Dwarkabai's any pre-existing right. When such is the position by no stretch of imagination it can be said that Dwarkabai had obtained or acquired any proprietary right. It can not be even the said that the property in question was gifted outright by Nivrutti to Dwarkabai. Though, Dwarkabai was in possession of the said land it had not in any way conferred a title to the said land. She had not in fact possessed any vestige of title. Dwarkabai's case is clearly governed by Section 14(2) of the Hindu Succession Act. I have therefore no hesitation to hold that there is no substance in the argument advanced by the learned Advocate for the

defendant Nos. 1 and 2 and the present case certainly does not fall under section 14 (1) of the Hindu Succession Act. Naturally, the Sale Deed executed by Dwarkabai when she had no right, title and interest in the same has to be held to be illegal and void. Naturally, the suit filed by the Plaintiff for possession on the basis of title is rightly decreed by the learned First Appellate Court. There is no error of law in the order passed by the said Court.

21. In view of above, there is no substance in this appeal. Hence, I pass the following order:

O R D E R

Appeal is dismissed with costs.

However, defendant Nos. 1 and 2 are granted time till 15/09/2007 to hand over the possession of the suit property to the Plaintiff.

(S.R.SATHE, J.)